

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CARL VON MORTENSON,

Civil No. 04-3098-CO

Plaintiff,

Order

v.

BARBARA E. WEIDENBACH,

Defendant.

Magistrate Judge John P. Cooney filed Findings and Recommendation on February 10, 2005, in the above entitled case. The matter is now before the court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981),

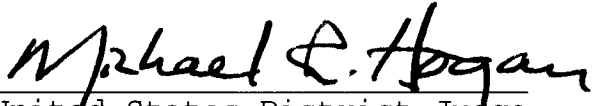
cert. denied, 455 U.S. 920 (1982).

Plaintiff timely filed objections. The court has, therefore, given de novo review of Judge Cooney's rulings. The court ADOPTS Judge Cooney's recommendation to grant defendant's motion to dismiss. The abstention doctrine of Younger v. Harris, 401 U.S. 37 (1971) is not implicated in this case, because subject matter jurisdiction is lacking in the first instance. The complaint seeks to determine ownership interests in a patent. This action therefore does not arise under an act of Congress relating to patents, and jurisdiction is not established by 28 U.S.C. § 1338(a). See Wade v. Lawder, 165 U.S. 624, 627 (1897); Geni-Chlor Intern., Inc. v. Multisonics Development Corp., 580 F.2d 981 (9th Cir. 1978). Nor does the complaint contain allegations sufficient to establish subject matter jurisdiction on some other basis.

Based on the foregoing, defendant's motion to dismiss [#4] is granted.

IT IS SO ORDERED.

DATED this 14th day of April, 2005.


United States District Judge